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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Settlement Rates	)	IB Docket No. 96-261
	)	
	)	

OPPOSITION OF SPRINT

Sprint Communications Company L.P. ("Sprint"), pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. §1.429(f), hereby opposes, in one respect, AT&T's Petition for Partial Reconsideration of the Commission's *Report and Order* (FCC 97-280) released August 18, 1997 ("*Benchmarks Order*") in the above-referenced proceeding.[1] Specifically, Sprint requests that the Commission deny AT&T's request that market entry by foreign carriers be conditioned on a requirement that the settlement rates of such carriers "be reduced to the 'best practice' rate." Petition at 3. In support thereof, Sprint stated as follows.

In the *Benchmarks Order,* the Commission determined that a carrier's Section 214 authorization "to provide facilities-based switched or private line services to a market in which its affiliated foreign carrier provides service" would be conditioned

[1]Sprint also opposes the Petition for Reconsideration filed by the Philippines Parties which challenges the legal underpinnings of the *Benchmarks Order*. The Philippines Parties, however, simply reiterate the arguments that were raised by various parties below and that were found by the Commission to be unavailing. *Benchmarks Order* at ¶¶275-314. Thus, the petition of the Philippines Parties should be denied.

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on "that foreign carrier offering U.S. carriers a settlement rate to terminate U.S.-originated traffic on the affiliated route that is at or below the relevant benchmark."[2] The Commission found that such condition is necessary to "prevent potential anticompetitive distortions in the U.S. market for IMTS." *Benchmarks Order* at ¶207.

Although AT&T agrees with the Commission on the need to utilize benchmarks to condition the authorization of carriers to provide service in affiliated foreign markets, it argues that use of the upper-end benchmark as the standard will not be effective in preventing anticompetitive distortions in the IMTS market. AT&T claims that the only way to "remove the ability and incentive [of foreign-affiliated carriers] to use settlement rates to engage in price squeezes and one-way by-pass" is to condition Section 214 authorizations of foreign-affiliated carriers upon the offering of settlement rates by the foreign carrier at the so-called "best practice" rate which, according to AT&T, "marks the low-end of the benchmark ranges."[3] Petition at 3.

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[2]Carriers' authorizations to provide switched services over resold international private lines will include the condition that "settlement rates for at least 50 percent of the settled U.S. billed traffic on the route or routes are at or below the appropriate benchmark." *Benchmarks Order* at ¶243.

[3]The "best practice" rate "is based on the lowest, commercially viable, settlement rate paid today by U.S. carriers to an overseas carrier from a competitive market." *Benchmarks Order* at ¶133. The initial "best practice" rate selected was the average settlement rate in the U.S.-Sweden market ($.08). *Id.* at ¶134.

The Commission recognized that "settlement rate benchmarks based on the Tariff Components Price methodology are above-cost." *Benchmarks Order* at ¶222. Nonetheless, it concluded that a Section 214 condition that required settlement rates in an affiliated market to be at or below the relevant benchmarks "substantially reduces the above-cost termination charges that could be used to execute a price squeeze." *Id.* It also found that such standard would not likely jeopardize the benefits to U.S. consumers that would result from increased competition by foreign carriers in the U.S. IMTS market. *Id.* at ¶221.

Thus, the Commission rejected AT&T's argument that the settlement rate standard to be used in conditioning the Section 214 authorizations of carriers in affiliated markets needed to be more stringent. *Benchmarks Order* at ¶208. It disagreed with AT&T's claim that the "settlement rates on the affiliated route [had to be] at or below a TSLRIC-based rate in order to prevent "market-distorting price squeeze behavior" by foreign affiliated carriers. *Id.* at ¶221. The Commission found that AT&T's proposed settlement rate condition "is not necessary to prevent distortions in the U.S. market for IMTS service," *id.*, and, in fact, "would be an overreaction to the potential for a price squeeze." *Id.* at ¶222. Moreover, the Commission determined that far from protecting competition, AT&T's proposed condition "could harm the development of further competition in the market" by "effectively deter[ring] many carriers from providing facilities-based service from the United States to affiliated markets." This, in turn, "would impede [the Commission's] goal of increasing competition in the U.S. market for IMTS to the detriment of U.S. consumers. *Id.* at ¶221.

Nothing in AT&T's petition suggests that the Commission's findings are incorrect or that the Commission should reconsider its carefully drawn balance between the acceptance of foreign competition and the need to prevent any anticompetitive behavior by such carriers. The Commission's declined to adopt low-end benchmarks because it did not have sufficient data to determine the TSLRIC of providing international termination service. *Id.* at ¶¶131-132. AT&T is simply incorrect in claiming that the so-called "best practice" rate establishes the low-end of the benchmark range. The "best practice" rate is an enforcement remedy to be applied on affiliated routes where "the Commission detects market distortion." *Id.* at ¶132. It would be odd indeed for the Commission, having decided against establishing a low-end benchmark because of a lack of data, to adopt a rate to be used only in enforcement proceedings as the settlement rate on all affiliated routes.

AT&T's central claim is that a foreign carrier's authority to serve its home market from the U.S. be conditioned upon the "best practice" rate because such rate is "much closer to foreign market termination costs." AT&T Petition at 5. But there is no evidence of this; and, in particular, there is no evidence that this is true for all countries. AT&T has provided no data to support the view that the "best practices" rate accurately establishes the cost-based rate for providing international termination service. For the Commission to accept AT&T's suggestion to condition Section 214 authorizations of foreign-affiliated carriers upon establishing the "best practice" rate as the settlement rate on the affiliated route would be completely inconsistent with the Commission refusal to adopt low-end benchmarks because of the lack of cost data.

Rejection of AT&T's requested revision is also suggested by the fact that there is no U.S. international market (with the apparent exception of U.S.- Sweden market) in which the settlement rate is as low as the $0.08 "best practice" rate adopted by the Commission. As AT&T is presumably aware, its proposed standard would seriously inhibit foreign competitors from entering the U.S. market, or if they have already entered, from remaining there. It is not clear that there are any foreign carriers that would be willing to lower accounting rates to $.08 in order to begin to provide or continue to provide service between their home markets and the U.S.

Moreover, to close the U.S. market to most foreign competition (and, as noted, this would be the clear result of AT&T's proposal) at the same time as the WTO agreement on telecommunications is to take effect would place the Commission, and the United States itself, in an extremely awkward position:

the Commission would be adopting additional protectionist measures at the same time that the U.S. and most of the rest of the world have agreed to open their telecommunications markets to foreign competition. Such a course is certainly unattractive and it may well be unlawful as well.

AT&T insists upon such protection because of the perceived dangers of foreign carrier inbound bypass and "price squeezes." Both of these dangers exist, but they hardly justify the assault on foreign competition sought by AT&T.

Inbound bypass exists and will continue to exist regardless of whether foreign carrier affiliates are allowed to operate in the United States. A foreign carrier with no U.S. affiliate can simply "bypass" U.S. accounting rates by sending inbound U.S. traffic via a third country with lower settlement rates to the U.S. than are applicable from foreign carrier's home country. The best defense against inbound bypass is to reduce accounting rates with all countries so they are closer to cost. This is what the Commission has sought to accomplish in its *Benchmarks Order*. It, therefore, makes no sense for the Commission to adopt a hypothetical "best practice" rate which has not been shown to be related to costs and which the Commission has therefore decided to use only as a remedial measure.

The danger of a "price squeeze" has similarly been exaggerated by AT&T.[4] An effective "price squeeze" requires (1) a U.S. affiliate that is either wholly owned by a foreign carrier or nearly so, and (2) an accounting rate substantially above cost. The Commission's test for affiliation ordinarily begins at 25 percent for non-controlling investments (47 C.F.R. §63.18(i)), and, in the case of Sprint, was applied to the acquisition of 10 percent interests in Sprint by France Télécom and Deutsche Telekom. *Sprint Declaratory Ruling*, 11 FCC Rcd 1850 (1996). The idea that a "price squeeze" could occur at these levels of ownership or even much higher levels of ownership is extremely unconvincing. Nevertheless, AT&T's proposed "best practice" test would apply regardless of the level of ownership by the foreign carrier in the U.S. affiliate and regardless of whether the foreign carrier even controls the foreign affiliate. In any case, a reduction of rates to the levels established by the *Benchmarks Order* will substantially eliminate the predicate for the second requirement to successfully accomplish a "price squeeze," namely, the existence of rates substantially above

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[4]This exaggeration is not new here. *See, e.g.,* AT&T's Opposition at 39-41 filed November 18, 1994 in *Sprint Corporation, Petition for Declaratory Ruling Concerning Sections 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended,* File No. ISP-95-002 (*Sprint Declaratory Ruling*). In its Reply filed December 5, 1994 in File No. ISP-95-002 at 58-60, Sprint explained that it would hardly be a sound business strategy for either France Télécom or Deutsche Telekom to subsidize an aggressive pricing campaign by Sprint in the U.S.-France or U.S.-Germany market by transferring revenues garnered from above-cost accounting rates to Sprint since each carrier would receive back only ten percent of any monies transferred.

costs. Under these circumstances, the danger of a "price squeeze" is sufficiently attenuated so that any remaining situations can be carefully monitored by the Commission and remedial action taken. The serious limitation on foreign entry suggested by AT&T's test is totally out of line with the marginal remaining danger of any "price squeeze."

For the reasons stated above, Sprint requests that the Commission deny AT&T's Petition for Reconsideration requesting that market entry by foreign carriers be conditioned on a requirement that the settlement rates of such carriers "be reduced to the 'best practice' rate."

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

Leon M. Kestenbaum
Michael B. Fingerhut
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 828-7438

Its Attorneys

October 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSITION** of Sprint Communications Company, L.P. was sent by hand or by United States first-class mail, postage prepaid, on this the 24th day of October, 1997 to the parties on the attached list.

Christine Jackson

Christine Jackson

October 24, 1997

Richard Beaird
Bureau of International
Communications and
Information Policy
Department of State
Room 4836
2201 C Street, N.W.
Washington, D.C. 20520

Suzanne Settle
Senior Policy Advisor
NTIA
Department of Commerce
Room 4701
14th & Constitution Ave, N.W.
Washington, D.C. 20520

Gail Polivy, Esq.
GTE
Suite 1200
1850 M Street, N.W.
Washington, D.C. 20036

Madeline E. Wall, Esq.
Cable & Wireless
124 Theobaids Road
London WCIX 8RX
United Kingdom

Philip V. Permut, Esq.
Kelley Drye & Warren LLP
Suite 500
1200 19th Street,
Washington, D.C. 20036

Alfred Mamlet, Esq.
Kent Bressie, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave. N.W.
Washington, D.C. 20036

Robert Aamoth, Esq.
Kelley Drye & Warren LLP
Suite 500
1200 19th Street, N.W.
Washington, D.C. 20036

Kenneth Robinson, Esq.
1133 21st Street, N.W.
P.O. Box 57.455
Washington, D.C. 20007-0455
Counsel for Telecom Italia

David Glickman, President
Justice Technology Corporation
One Justice Way
Box 1110
El Segundo, CA 90245

International Transcription
Service
Room 246
1919 M Street, N.W.
Washington, D.C. 20554

Leon T. Knauer
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
Counsel for Republic of Panama

Hon. Michael G. Oxley, Chairman
Subcommittee on Finance and Hazardous Materials
Committee on Commerce
U.S. House of Representatives
316 Ford House Office Building
Washington, D.C. 20515

Albert Halprin
Stephen L. Goodman
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W., Suite 650 East
Washington, D.C. 20005
Counsel for Telecom New Zealand Limited

Hon. John Fisango
Minister of Transport, Communications & Works
P.O. Box G8
Honlara
Solomon Islands

V.B. Bajracharya, General Manager
Nepal Telecommunications Corporation
Putali Bagaincha
Singh Durbar
Kathmandu
Nepal

José A. Cela, President
AHCIET
Box 70325
San Juan, Puerto Rico 00936

Philip J. Richards
Managing Director
Telecom Vanuatu Limited
P.O. Box 146
Port Vila, Vanuatu

C. Glenn Alwar
Charges d'Affaires ad interim
Embassy of the Republic of Suriname
4301 Connecticut Avenue, N.W.
Washington, D.C. 20008

Michael J. Shortley, III
Regulatory Services
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Jonathan Jacob Nader
James M. Fink
Thomas E. Skilton
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W., P.O. Box 407
Washington, D.C. 20044

Jonathan Jacob Nadler
James M. Fink
Thomas E. Skilton
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W., P.O. Box 407
Washington, D.C. 20044

Amb. Vonya B. McCann
U.S. Coordinator
International Communications
U.S. Department of State
2201 C Street, Room 4826
Washington, D.C. 20520

Amb. Jeffrey M. Lang
Deputy U.S. Trade Representative
Office of U.S. Trade Representative
600 17th Street, N.W., Room 200A
Washington, D.C. 20508

Hon. Larry Irving
Assistant Secretary for Communications
U.S. Department of Commerce
14th & Constitution Avenue, N.W.
Room 4898
Washington, D.C. 20230

Jeffrey P. Cunard
Lothar A. Kneifel
Debevoise & Plimpton
555 13th Street, N.W., Suite 1100E
Washington, D.C. 20004

Robert S. Koppel, Vice President
International Regulatory Affairs
WorldCom, Inc.
15245 Shady Grove Road
Suite 460
Rockville, MD 20850

Hon. W.J. Tauzin, Chairman
Subcommittee on Telecommunications,
Committee on Commerce
U.S. House of Representatives
316 Ford House Office Building
Washington, D.C. 20515

Iris Struiken-Wijdenbosch
Chairwoman of CANTO
#67 Picton Street
Newtown, Port of Spain
Trinidad, W.I.

Gary M. Epstein
Teresa D. Baer
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Robert J. Aamoth
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Videsh Sanchar Nigam Limited
Mahatma Gandhi Road
Bombay 400 001
India

Charles C. Hunter
Catherine M. Hannan
Hunter & Mow, P.C.
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Margaret M. Charles
Dalhi N. Myers
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Terrence P. McGarty
President
The Zephyr Capital Group, Inc.
24 Woodbine Road
Florham Park, NJ 07932

Kelley Boan
North American Representative, Telia AB
234 Oak Court
P.O. Box 752
Severna Park, Maryland 21146

I. Rudaka, Director
Department of Communications
Ministry of Transport of the Republic of Latvia
3 Gogola Street
Riga, LV-1190
Latvia

Judith D. O'Neill
Janet Hernandez
Reid & Priest LLP
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for TRICOM, S.A.

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications Inc.
175 E. Houston, Room 1254
San Antonio, TX 78205

Helen E. Disenhaus
Adam L. Kupetsky
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for ACC Corp.

Pat Phillips, First Secretary, Trade Policy
British Embassy Washington
Trade Department
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008-3600

Hon. Robin Yearwood
Minister of Public Works, Utilities & Transportation
Cassada Gardens, P.O. Box 416
St. John's
Antigua

Zhang Ligui
Directorate General of Telecommunications, P&T, China
13, West Chang An Avenue
Zip: 100804
Beijing, P.R. China

Samuel A. Martin, Chief Executive Officer
Telecommunications Services of Trinidad
P.O. Box 917, 54 Frederick Street
Port of Spain, Trinidad
West Indies

R. Michael Senkowski
John B. Reynolds, III
Richard T. Pfohl
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Hon. Tom Bliley, Chairman
Committee on Commerce
U.S. House of Representatives
316 Ford House Office Building
Washington, D.C. 20515

Gene C. Schaerr
Daniel Meron
AT&T Corp.
1722 Eye Street, N.W.
Washington, D.C. 20006

Hon. John D. Dingell
Committee on Commerce
U.S. House of Representatives
316 Ford House Office Building
Washington, D.C. 20515

A. Bradley Shingleton
Deutsche TeleKom AG
1020 19th Street, N.W.
Suite 850
Washington, D.C. 20036

Theodore W. Krauss
Danielle K. Aguto
France Telecom North America
555 13th Street, N.W., Suite 1100 East
Washington, D.C. 20004

John M. Scorce
Larry Blosser
Carol R. Schultz
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Joseph S. Charter, Permanent Secretary
Ministry of Works, Communications & Public
Young Street
St. George's
Grenada, W.I.

Chung Huh, Senior Managing Director
Marketing & Sales Group
ONSE Telecom
942-1 Daechi-dong Kangnam-ku Seoul, Korea
135-280

Raul R. Rodriguez
Walter P. Jacob
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

Jerzy Babski, Director
Department of International Cooperation
Ministry of Communication
Pl. Malachowskiego 2
00-940 Warsaw
Poland

Junichiro Miyazaki
Counselor of Embassy of Japan
Embassy of Japan
2520 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Hiroshi Shibata, Director - International Services
International Digital Communications
5-20-8, Asakusabashi
Taito-ku, Tokyo 111-61
Japan

Seung-Sul Woo, Vice President
Strategic Marketing Group
Korea Telecom
211 Sejongro Chongnogu Seoul, Korea
110-777

Leon T. Knauer
Richard J. Leitermann
M. Veronica Pastor
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W., Suite 600
Washington, D.C. 20006

Gregory C. Staple
R. Edward Price
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W., Suite 1000
Washington, D.C. 20036

Young-Chul Kim
Executive Vice President
DACOM Corporation
DACOM Bldg., 65-228, 3-GA, Hangang-ro, Seoul, Korea
140-712

Kathryn O'Brien
International Bureau
Federal Communications
Commission
2000 M Street, N.W., 8th Floor
Washington, D.C. 20554

Regina Keeney, Chief
International Bureau
Federal Communications
Commission
2000 M Street, N.W., 8th Floor
Washington, D.C. 20554

Diane Cornell
International Bureau
Chief, Telecommunications
Division
Federal Communications
Commission
2000 M Street, N.W., 8th Floor
Washington, D.C. 20554

Martin Lewin, Esq.
Aitken Irvin Lewin Berlin
Vrooman & Cohn, LLP
Counsel for Hemispheric
Competitiveness
1709 N Street, N.W.
Washington, D.C. 20036